

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

RETURNING

Senate bill No. 1958, with his objections thereto.

JULY 29, 1892.—Read and laid upon the table, and ordered to be printed.

To the Senate:

I return herewith, without my approval, the bill (Senate 1958) entitled "An act to submit to the Court of Private Land Claims, established by an act of Congress approved March 3rd, 1891, the title of William McGarrahan to the Rancho Panoche Grande in the State of California, and for other purposes."

This bill came to me on the 20th instant, at a time when very many other bills were submitted for my consideration, and it has not been possible for me to make such an examination of the history of Mr. McGarrahan's claim as would be necessary to form an intelligent judgment as to its merits and just extent. It is quite possible that he has been wronged and that he has a claim for some reparation from the Government. I can not, however, think that this bill proceeds upon a just basis. It provides that Mr. McGarrahan shall file his claim as the assignee of Gomez in the Court of Private Land Claims for the lands described in the title; and that if the court establishes the grant to Gomez it shall be confirmed to McGarrahan. No evidence that he is the assignee of Gomez is, I think, required by the bill, which assumes that fact, instead of submitting it to the court. If the claim is established it is provided, in substance, that all lands, part of said grant, which have been conveyed by the Government or are in the occupancy of actual settlers, or "upon which there are any smelting or reduction works, or the lands claimed in connection with such reduction or smelting works," shall be excepted from the patent which the Secretary of the Interior is directed to issue to McGarrahan. By this provision the title of the New Idria Mining Company, which has long contested with McGarrahan the title to a large part of this property, is established and that company is relieved from any responsibility to account for the profits made in mining. On the other hand, the United States waives all benefit of judicial proceedings which have resulted in its favor and gives Mr. McGarrahan an opportunity *de novo* to try all such questions; and the decision, if in his favor, is not only to restore to him all the lands yet undisposed of, but the United States assumes to pay him the value of the lands appropriated by others, and of their use for all these years, and to account to him for

all profits that have been made by the New Idria Mining Company, or anyone else, in quicksilver or other mining.

This seems to me to be wholly inadmissible. The amount involved must be enormously large, though at present incapable of any accurate estimate. If the title of the New Idria Company has been established by final decrees of court, placing that title beyond question, and that company beyond any call to respond for use and profits, why should the Government of the United States, waiving in its behalf these decrees which would protect it also, assume a responsibility to account for the value of the lands and for their use and for the net value of minerals extracted by that company or others? It will be noticed in the quotation I have made from the act that this company is allowed to take all the land it may claim, but at the expense of the United States, not of Mr. McGarrahan.

The bill is so framed as to give full protection to the New Idria Mining Company to the full extent of its largest claim, while throwing upon the United States a responsibility which that company should bear if the title of Mr. McGarrahan is established.

The United States provided a proper tribunal for the trial of claims founded upon Mexican grants. This claim was there tried, and if fraud affected the judgment it is not, I think, chargeable to the Government—the contest was chiefly between rival claimants. In this state of the case it would seem that if the United States consents to open the litigation, and to wipe out all judicial findings and decrees, that a less exacting measure of damages than that proposed in the bill should be agreed on.

It is not my purpose, as I have intimated, to express the opinion that Mr. McGarrahan is entitled to no relief. It seems to me, however, clear that he is not entitled to the relief given by this bill, and that it does not adequately protect the interests of the United States.

BENJ. HARRISON.

EXECUTIVE MANSION,
July 29, 1892.

[Fifty-second Congress of the United States of America, at the first session, begun and held at the city of Washington, on Monday, the 7th day of December, 1891.]

AN ACT to submit to the Court of Private Land Claims, established by an act of Congress approved March third, eighteen hundred and ninety-one, the title of William McGarrahan to the Rancho Panoche Grande, in the State of California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the claim, petition, and papers or copies thereof relating to or touching the grant made by Manuel Micheltorena, governor of Upper California, to Vicente P. Gomez, in the year eighteen hundred and forty-four, of the Rancho Panoche Grande tract of land, in the State of California be, and the same are hereby, referred to the Court of Private Land Claims, established by an act of Congress approved March third, eighteen hundred and ninety-one, and said court is hereby vested with the powers and jurisdiction to hear and determine and adjudicate the validity of said grant, and to render final judgment thereon, and in determining the same shall for the purposes of this act hold such sessions as may be necessary, at the city of Washington, in the District of Columbia, and shall exercise the powers and jurisdiction that were possessed by the former United States district court for the southern district of California, which had power and jurisdiction to hear and determine the appeal from the Board of Land Commissioners created under the act of March third, eighteen hundred and fifty-one, entitled an act "to ascertain and settle private land claims in the State of California," and the acts amendatory thereof, on the claim of said Vicente P. Gomez to the said tract of land known as the Rancho Panoche Grande; and that William McGarrahan, claiming to have

acquired by subsequent purchase, for a valuable consideration, the title of said Vicente P. Gomez to said tract of land, and as successor to the rights of said Vicente P. Gomez, may at any time, within six months from the passage of this act, file his petition in said court asking for the confirmation of said grant and judgment thereon and may prosecute said petition and cause against the United States in that court; and it shall be the duty of the custodian of the records and papers in said cause before said Board of Land Commissioners to transmit them to the clerk of said court immediately upon the passage of this act; and such proceedings shall be had on said petition in the said court as might have been had in said district court between the said Vicente P. Gomez and the United States, irrespective of any subsequent proceedings that may have been had in said district court or in any court of record of the United States.

SEC. 2. That upon the trial of questions or issues arising on the hearing of said petition herein provided for the said court shall receive as evidence of said grant and boundaries thereof the original expediente presented by the said Gomez to the said Governor Manuel Micheltorena, and the diseño or map accompanying same, or a copy thereof, the depositions and other evidence produced before said Board of Land Commissioners, or copies thereof, and all depositions, proofs, testimony, or affidavits taken before any circuit or district court of the United States, in the State of California, or the clerks of such courts, or any commissioner appointed by said courts, or before any notary public, or before any committee of the Senate and House of Representatives of the Congress of the United States, or of any map or record of any department of the Government of the United States, or of any act of Congress through which the aforesaid boundaries set forth in said expediente and the title to the said lands can be shown protected, and established, or of any oral or written testimony or deposition or copies thereof, concerning said record touching said grant from said Governor Manuel Micheltorena to said Vicente P. Gomez, or any patent or record of a patent for any portion of said lands in any of the departments of the Government signed by the President of the United States or by his private secretary authorized to sign land patents, or of any record of a patent having the signature of the President of the United States thereto, and other lawful evidence concerning the rights of the parties before the court.

SEC. 3. That if said court shall find and adjudge that the said grant from said Governor Manuel Micheltorena to said Vicente P. Gomez was valid and protected under and by virtue of the treaty between the said Government of the United States and that of Mexico, commonly known as the treaty of Guadalupe Hidalgo, and the laws of Congress to give effect to the same, the said court shall report such finding and judgment to the Secretary of the Interior, who shall cause a patent to be issued therefor to said William McGarrahan, as the successor of the said Vicente P. Gomez, or his heirs or assigns, for the land embraced within the aforesaid boundaries, except as hereinafter provided, and that the survey made by the United States surveyor-general for the State of California and approved by said surveyor-general on the eleventh day of September, eighteen hundred and sixty-two, which survey was approved by the Secretary of the Interior December twenty-ninth, eighteen hundred and sixty-two and is now on file in the General Land Office, shall be considered as forming part of the lands embraced within said boundaries: *Provided*, That no finding or judgment of the said court in favor of said William McGarrahan or his heirs or legal representatives or assigns, or patent to be issued under authority of such findings, and judgment shall be held to take from the present holders any portion of said tract of land so described which has been heretofore disposed of by the United States, or upon which there are any smelting or reduction works, or the lands claimed in connection with such reduction or smelting works, or upon which there shall be found at the date of the passage of this act any settlers having an actual residence thereon. And it is hereby made the duty of the Secretary of the Interior, on receipt of any report made to him by the said court in favor of said McGarrahan, to forthwith ascertain in such manner as may seem to him the most certain and expeditious what tracts of land have been conveyed or are otherwise embraced by the reservation of this proviso, and for the residue of said land shall issue a patent to the said William McGarrahan, as hereinbefore provided.

SEC. 4. That if the court shall adjudge in favor of said William McGarrahan as provided in section three, the United States shall indemnify the said William McGarrahan for such portion of land as may have been heretofore and may hereafter be disposed of by the United States within the aforesaid boundaries and for the use and occupation of the same, and for any mineral or valuable substance whatever extracted from said lands by any person or corporation other than the said William McGarrahan, and if the said court shall find that the said William McGarrahan is or was entitled in law or equity to the minerals or valuable substances on, in, or under said lands; and to that end it is hereby made the duty of said court to ascertain the value of such portion of said lands so disposed of, or to be disposed of, and of the use and occupation thereof, and of the minerals or other valuable substances so ex-

tracted, less the value of the improvements, if any, made upon said lands and the cost of mining and extraction of said minerals and valuable substances; and said court shall render judgment against the United States and in favor of the said William McGarrahan for the amount so ascertained.

SEC. 5. That the United States or the said William McGarrahan if dissatisfied with the judgment of the said court, may, within six months apply for, and the said court shall, upon the application of either party, grant an appeal to the Supreme Court of the United States: *Provided, further*, That no patent nor any of the land scrip shall issue to the said McGarrahan unless he shall first execute and deliver to the Secretary of the Interior a deed conveying to the United States all his right, title, and interest to the lands which by the terms of the proviso of the third section of this act are to be excepted from the said patent.

SEC. 6. That the foregoing proceeding may be begun and prosecuted by the said William McGarrahan or his legal representatives, as herein provided, notwithstanding any statute heretofore enacted or decision heretofore made, and according to the very right and justice of the case. The Attorney-General, or one of his associates, shall represent the United States in any proceedings under this act.

Passed the Senate May 24, 1892.

Attest:

ANSON G. MCCOOK,
Secretary.

CHAS. F. CRISP,
Speaker of the House of Representatives.

LEVI P. MORTON,
Vice-President of the United States and President of the Senate.

I certify that this act originated in the Senate.

ANSON G. MCCOOK,
Secretary.

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